

Michigan Department of Licensing and Regulatory Affairs  
**Office of Regulatory Reinvention**  
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**REGULATORY IMPACT STATEMENT  
and  
COST-BENEFIT ANALYSIS**

**PART 1: INTRODUCTION**

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

**ORR-assigned rule set number:**

2015-044 LR

**ORR rule set title:**

Unbundled Network Element and Local Interconnection Services

**Department:**

Licensing and Regulatory Affairs (LARA)

**Agency or Bureau/Division**

Public Service Commission (PSC or Commission)

**Name and title of person completing this form; telephone number:**

Lisa Gold, Administrative Law Specialist; 517-284-8084

**Reviewed by Department Regulatory Affairs Officer:**

Liz Arasim  
Department of Licensing and Regulatory Affairs

## **PART 2: APPLICABLE SECTIONS OF THE APA**

### **MCL 24.207a “Small business” defined.**

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

### **MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).**

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

**MCL 24.245 (3)** “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

### PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

#### Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

These rules were adopted by the Commission on May 17, 2010 and became effective on May 25, 2010. MCL 484.2202(2) provides “Any service quality rules promulgated by the commission shall expire within 3 years of the effective date of the rules. The commission may, before the expiration of the rules, promulgate new rules under subsection (1)(c).” Pursuant to this power, these rules were then re-adopted by the Commission on March 15, 2013 and took effect on May 25, 2013. Thus, by law, these rules will expire on May 25, 2016, and the Commission is authorized to, before the expiration of the rules, promulgate replacement rules. The Commission proposes to re-promulgate the identical rules.

These rules do not exceed national or regional compliance requirements or other standards. These rules are promulgated pursuant to MCL 484.2202(1)(c)(ii), which provides that “[T]he commission shall do all of the following: . . . Promulgate rules under section 213 to establish and enforce quality standards for all of the following: . . . The provision of unbundled network elements and local interconnection services to providers that are used in the provision of basic local exchange service.” While the Michigan Telecommunications Act was substantially amended in 2011 by 2011 PA 58, and several other rules sets were repealed by that act, the legislature chose to retain the rules created under MCL 484.2202(1)(c)(ii) and preserve the Commission’s authority to promulgate such rules.

The Commission is not aware of any conflict with or duplication of state or federal regulations. There are no known comparisons to state or national licensing organization standards. The rules are based upon existing negotiation processes between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) as provided for by Sections 251 and 252 of the Federal Telecommunications Act (FTA) – 47 USC 251 and 252 – and standards established through industry-wide proceedings that occur between the individual ILECs and participating CLECs.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

Similarly situated states are Illinois, Indiana, Ohio, and Wisconsin. These rules do not exceed the standards in these states. The rules are based upon existing negotiation processes between ILECs and CLECs as provided for by Sections 251 and 252 of the FTA – 47 USC 251 and 252 – and standards established through industry-wide proceedings that occur between the individual ILECs and participating CLECs. All states are required to comply with Sections 251 and 252 of the FTA.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

There are no known conflicts, duplications, or overlaps with other legal requirements. See (1).

#### Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

These rules specify the minimum quality standards for provision of unbundled network elements (UNEs) and local interconnection services applicable to ILECs interconnecting with CLECs, to enable efficient competition in the marketplace in the provision of basic local exchange service. In brief, the rules (specifically R 484.74) provide that the minimum quality standards for the provision of UNEs and local interconnection by an ILEC shall be either the standards set out and approved by the Commission in an industry-wide proceeding or, the standards adopted by the interconnecting parties pursuant to contract (in their interconnection agreement (ICA)) approved by the Commission. The rules are crafted to apply to large ILECs in their offering of wholesale UNEs and interconnection. Small ILECs do not offer UNEs on a wholesale basis, and the few CLECs currently engaged in offering wholesale services are excluded from these rules due to the small amount of activity that they generate and the costs that would be incurred to implement processes to address and monitor such rules. The rules are based upon existing negotiation processes between ILECs and CLECs, as provided for by 47 USC 251 and 252, and standards established through industry-wide proceedings that occur between the individual ILECs and participating CLECs before the Commission.

Creating an intricate set of rules for the provision of unbundled network elements and local interconnection services has been left largely unnecessary due to market forces and the effective negotiation processes between providers already in existence. When such processes already exist and allow for certainty, there is no need for additional regulatory intervention at this time. There is presently no known reason to believe there will be any negative effects from continuing promulgation of these rules. The Commission proposes to re-promulgate the identical rules.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

There are no changes.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

See (4).

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

NA

### **Fiscal Impact on the Agency:**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

There is no foreseen additional cost to the Commission, as this rule set will result in no change to the existing processes for the provision of UNEs and local interconnection services. Current staffing levels are sufficient to monitor compliance with these rules.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

NA. See (8).

**Impact on Other State or Local Governmental Units:**

(10) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

None.

(11) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

None.

(12) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

NA

**Rural Impact:**

(13) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

None.

**Environmental Impact:**

(14) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

None.

**Small Business Impact Statement:**

*[Please refer to the discussion of "small business" on page 2 of this form.]*

(15) Describe whether and how the agency considered exempting small businesses from the proposed rules.

The Commission did not consider exempting small businesses because there is no disproportionate impact on small businesses. See, MCL 24.240(1). Additionally, all ILECs are subject to Sections 251 and 252 of the FTA. This rule complements federal law and does not impose standards more stringent than those required by federal law. See, MCL 24.240(5).

(16) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

There is no disproportionate impact on small businesses.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

There are approximately 130 small business basic local exchange service providers that are affected by these rules. These rules indicate that performance standards shall be either the standards set out in an industry-wide proceeding before the Commission, or, the standards adopted by the interconnecting parties pursuant to their ICA, which is voluntarily negotiated, and later approved by the Commission. The only industry-wide proceeding, in Case No. U-11830, applies to AT&T Michigan (the ILEC) and all CLECs interconnecting with AT&T Michigan. Thus, all other ILECs are subject to the alternative standard, that is, those standards adopted by the ILEC and CLEC in their ICA. The rules do not impose a new regulatory scheme. This allows for regulatory certainty for both ILECs and CLECs in the continuation of their operations.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

There are no differing compliance or reporting requirements or timetables in these rules.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

There are no differing compliance or reporting requirements in these rules.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

These performance standards were not designed to replace design or operation standards.

(17) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

None.

(18) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

There are no reporting requirements in these rules.

(19) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

The businesses exclusively affected by these rules are providers of basic local exchange service. There are no additional costs incurred as the regulated businesses, specifically providers engaged in providing and obtaining UNEs and local interconnection services used in the provision of basic local exchange service should already be in compliance under federal law.

(20) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

NA

(21) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

NA

(22) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

None.

(23) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The rules are crafted to apply to large ILECs in their offering of wholesale UNEs and interconnection. Small ILECs do not offer UNEs on a wholesale basis, and the few CLECs currently engaged in offering wholesale services are excluded from these rules due to the small amount of activity that they generate

and the costs that would be incurred to implement processes to address and monitor such rules. The rules are based upon existing negotiation processes between ILECs and CLECs, as provided for by 47 USC 251 and 252, and standards established through industry-wide proceedings that occur between the individual ILECs and participating CLECs before the Commission. In the absence of all quality standards, the quality of telecommunications service would be expected to deteriorate. The rules do not impose a new regulatory scheme. The rules allow for regulatory certainty for both large and small providers in the operations of their businesses.

(24) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

There have been no complaints received or filed with the Commission regarding the existing rules. The Telecommunications Division Staff commenced an informal comment process in February 2015 with affected ILECs and CLECs regarding whether these rules should be re-promulgated, and, if so, whether these rules should be revised. Small business-ILECs and CLECs were invited to participate in this process. No comments were received recommending that the rules be allowed to lapse or be eliminated. One informal comment was received from the Midwest Association of Competitive Carriers supporting re-promulgation of the existing rules. Another from the Michigan Cable Telecommunications Association (MCTA), suggests expanding the rules for UNEs and local interconnection beyond basic local exchange service providers. At this time, the Commission does not believe MCTA's arguments support a change in the current rules. There is presently no known reason to believe there will be any negative effects from re-adopting these existing rules.

#### **Cost-Benefit Analysis of Rules (independent of statutory impact):**

(25) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

These rules are designed to regulate businesses, specifically providers engaged in providing and obtaining unbundled network elements and local interconnection services used in the provision of basic local exchange service. There would be no additional costs incurred by providers to comply with these rules, as these rules are based on the existing negotiation and arbitration processes as provided for in Sections 251 and 252 of the FTA that allows a competitive carrier to purchase unbundled network elements and local interconnection services from an incumbent local exchange carrier.

The rules do not impose a new regulatory scheme and there will be no additional costs imposed as a result of these rules. This allows for regulatory certainty for providers in continuation of their operations. Additionally, the rules are crafted to apply to large ILECs in their offering of wholesale UNEs and interconnection. Small ILECs do not offer UNEs on a wholesale basis and the few CLECs currently engaged in offering wholesale services are excluded from these rules due to the small amount of activity that they generate and the costs that would be incurred to implement processes to address and monitor such rules.

(26) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

NA



(27) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

NA

(28) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

See (4) and (5).

(29) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth or job creation in Michigan.

(30) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

None.

(31) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The Commission relied on the staffs of the Telecommunications Division and the Regulatory Affairs Division in compiling this RIS. Estimates and assumptions were made on the basis of information in the possession of those employees. The proposed rules are mandated by MCL 484.2202.

#### **Alternatives to Regulation:**

(32) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

A regulatory scheme currently exists independent of state intervention for the most part. Due to the myriad of services that an individual provider may offer and technical differences in provider networks, it is not feasible to craft a set of rules that can be applied to each individual provider. Providers are routinely involved in the processes of negotiating the purchase of UNEs and interconnection services and standards for such services. The state role in the process is dictated in Sections 251 and 252 of the FTA, which allow for providers to bring any issues that cannot be negotiated to the individual state commissions for resolution of the issue through arbitration. The Michigan Telecommunications Act and federal law also allows any disputes that result from an existing ICA to be brought to the Commission for resolution. Specific standards have also been established for Michigan's largest ILEC and provider of wholesale UNEs, Michigan Bell Telephone Company, d/b/a AT&T Michigan, in Commission docket No. U-11830, a proceeding which was opened in 1998 as a result of AT&T's desire to offer interLATA long distance telephone service. The standards established in Case No. U-11830 are modified periodically during industry collaboratives and include the AT&T Midwest ILEC affiliates, staff from MI, IL, IN, OH and WI state utility commissions, and participating CLECs. The standards established or modified during these collaboratives are then approved by the individual state commissions and can be incorporated into interconnection agreements that AT&T has negotiated with the individual CLECs. The Commission is unaware of any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

(33) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Current laws allow market-based mechanisms to be at work in determining the content of the performance standards negotiated in an ICA under Sections 251 and 252 of the FTA between ILECs and CLECs.

The rules are crafted to apply to large ILECs in their offering of wholesale UNEs and interconnection. Small ILECs do not offer UNEs on a wholesale basis, and the few CLECs currently engaged in offering wholesale services are excluded from these rules due to the small amount of activity that they generate and the costs that would be incurred to implement processes to address and monitor such rules. The rules are based upon existing negotiation processes between ILECs and CLECs, as provided for by 47 USC 251 and 252, and standards established through industry-wide proceedings that occur between AT&T Michigan and participating CLECs before the Commission.

(34) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The alternative of allowing the rules to lapse without taking action was considered. No stakeholders advocated this alternative.

#### PART 4: REVIEW BY THE ORR

**Date Regulatory Impact Statement (RIS) received:**

8-6-2015

<b>Date RIS approved:</b>	<b>8-7-2015</b>
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<b>ORR assigned rule set number:</b>	<b>2015-044 LR</b>
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<b>Date of disapproval:</b>	Explain:
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<b>More information needed:</b>	Explain:
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(ORR-RIS January 2012)